



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22303-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 976,391	10 12 2001	Patrick J. Treado	011311	2777

7590

07 21 2003

Michael L. Dever, Esq.
Buchanan Ingersoll
One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219

EXAMINER

LAUCHMAN, LAYLA G

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 07 21 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,391

Applicant(s)

TREADO ET AL.

Examiner

L. G. Lauchman

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-11, 15, 16 and 18-20 is/are allowed.
- 6) ☐ Claim(s) 12, 14 and 17 is/are rejected.
- 7) ☐ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Objections

Claim 17 is objected to because of the following informalities: It is not clear from the claim how the sample can be moved through an objective. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Marbach (US 6,571,117).

As to Claim 12, Marbach teaches an imaging measuring system comprising a near infrared imaging detection system and a visible imagery system (see Fig. 1a, col. 7, lines 18-67, and col. 8, lines 1-5)

As to Claim 14, Marbach teaches everything as applied to claim 12 above, and an illumination source (13) for illuminating an area of a sample using light in the visible wavelength; and a device 22 for detecting said visible wavelength from said illuminated area of said sample.

Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by MacAulay (US 6,483,641).

MacAulay teaches a method of reconstruction a 3D-image (see Figs. 10a, 10b, and 11) comprising, moving a sample 20 along an objective 22; collecting images of said sample through said objective in a plurality of focus depths (Fig. 11), and processing said collected images to reconstruct an image of said sample (see col. 23, lines 53-67, col. 24, lines 1-17).

Allowable Subject Matter

Claims 1-11, 15, 16, 18-20 are allowed.

The following is an examiner's statement of reasons for allowance:

As to Claim 1, the prior art of record taken along or in combination, fails to disclose or render obvious a device for collecting a spectrum of near infrared wavelength radiation transmitted, reflected, or scattered from said illuminated area of said sample and producing a collimated beam therefrom, a near infrared imaging spectrometer for selecting a near infrared radiation image of said beam and a detector for collecting said filtered near infrared images, in combination with the rest of the limitations of the claim.

As to Claim 17, the prior art of record taken along or in combination, fails to disclose or render obvious a device for collecting a spectrum of near infrared wavelength radiation transmitted, reflected, or scattered from said illuminated area of

said sample and producing a collimated beam therefrom, a near infrared imaging spectrometer for selecting a near infrared radiation image of said beam and a detector for collecting said filtered near infrared images, in combination with the rest of the limitations of the claim.

As to Claim 16, the prior art of record taken along or in combination, fails to disclose or render obvious filtering said collimated beam to produce a near infrared wavelength radiation image of said collimated beam while simultaneously detecting said optical wavelength light from said illuminated area of the sample and processing the collected near infrared images to produce a chemical image of said sample, in combination with the rest of the limitations of the claim.

As to Claim 18, the prior art of record taken along or in combination, fails to disclose or render obvious collecting images of said sample at a plurality of near infrared wavelengths through said objective at a fixed focus condition and processing said collected images to reconstruct a depth resolved image of the sample, in combination with the rest of the limitations of the claim.

As to Claim 19, the prior art of record taken along or in combination, fails to disclose or render obvious collecting a plurality of spatially-resolved spectra for said plurality of analytes, producing a plurality of chemical images of said sample containing said plurality of analytes and processing said plurality of images to generate a chemical image of a sample, in combination with the rest of the limitations of the claim.

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703)308-7722 or 308-7724.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

- a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and
- b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (703) 305-0071.

Application/Control Number: 09/976,391
Art Unit: 2877

Page 6

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (703) 308-0956.

L. G. Lauchman
Patent Examiner
Art Unit 2877
7/13/03/lgl



Frank G. Font
Supervisory Patent Examiner
AU 2877